

IT 04-11

Tax Type: Income Tax

Issue: Federal Change (Individual)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	No. 03-IT-0000
)	
)	SSN: 000-00-0000
v.)	
)	Tax Year: 2000
)	
JOHN DOE,)	
)	
TAXPAYER)	Administrative Law Judge
)	Kenneth J. Galvin

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Rebecca Kulekowskis on behalf of the Department of Revenue of the State of Illinois; Mr. John Doe, *pro se*.

Synopsis:

On August 1, 2003, the Illinois Department of Revenue (hereinafter “the Department”) issued a Notice of Deficiency (hereinafter “NOD”) to John Doe (hereinafter “taxpayer”). The basis of the NOD was the Department’s determination that the taxpayer had failed to file an Illinois income tax return for tax year 2000. The NOD proposed the assessment of taxes, penalties and interest.

On August 8, 2003, taxpayer filed a timely protest of the NOD and requested a hearing, which was held on August 17, 2004. Following a review of the testimony and

evidence presented at the hearing, it is recommended that the Department's NOD be finalized.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD, which indicates that the taxpayer failed to file an Illinois income tax return for tax year 2000 and assesses a deficiency including tax, penalties and interest. Tr. p. 10; Dept. Ex. No. 1.
2. On November 19, 2003, the Department certified that no individual income tax return for tax year 2000 was filed by John Doe. Tr. pp. 10-11; Dept. Ex. No. 2.
3. Based upon information obtained from the Internal Revenue Service regarding the taxpayer's federal income tax, the Department determined the taxpayer's adjusted gross income to be \$19,726 in tax year 2000 with tax due of \$410. Tr. pp. 11-12; Dept. Ex. Nos. 3 and 5.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). Section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. 35 ILCS 5/601(a). If a taxpayer fails to file a tax return, the Department shall determine the amount of the tax due and this amount shall be "*prima facie* evidence of the correctness of the amount due." 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois Income Tax Act provides that a NOD is *prima facie* evidence of the correctness of the

amount of tax and penalties due. 35 ILCS 5/904(a). To overcome the Department's *prima facie* case, the taxpayer must present consistent and probable evidence identified with its book and records. A taxpayer's testimony alone will not overcome the Department's *prima facie* case. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987).

The NOD issued in this case on August 1, 2003, indicates that taxpayer had adjusted gross income of \$19,726 in tax year 2000 and failed to file a tax return. Dept. Ex. No. 1. In taxpayer's protest, filed August 8, 2003, he included an unsigned copy of his Federal 1040 for tax year 2000 which also shows an adjusted gross income of \$19,726. Dept. Ex. No. 5. I conclude that the federal-1040 for tax year 2000 was filed by the taxpayer because the Department's NOD states that the Department had obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code.

The Department's NOD dated August 1, 2003 showed tax due of \$410 on the adjusted gross income of \$19,726. Dept. Ex. No. 1. On September 15, 2003, the Department sent the taxpayer notice of the "Tax Amnesty Program." This notice states that the "Amnesty Balance Due" is \$410. The notice also states that penalties and interest would be forgiven "provided you file the required returns and make full payment of your 'Amnesty Balance Due' between October 1, 2003 and November 17, 2003." Taxpayer's Ex. No. 3.

At the evidentiary hearing, taxpayer offered into evidence an IL-1040 on a year 2000 tax form, signed by the taxpayer during the amnesty period on November 5, 2003, showing an adjusted gross income of \$5,274. Attached to the tax year 2000 form are

two W-2's for tax year 2002, not tax year 2000. Apparently, the taxpayer paid \$139 at or about the time that he filed this tax year 2000 form. Dept. Ex. No. 4; Taxpayer's Ex. No. 4. It is unclear how the taxpayer calculated an adjusted gross income of \$5,274 for year 2000 as this amount does not agree with the adjusted gross income of \$19,726 on taxpayer's federal-1040 for tax year 2000, which he included in his protest. Taxpayer stated at the hearing: "I don't know where I came up with that \$5,274. But as I said before, I was under a lot of emotional stress." Tr. p. 24. Taxpayer has failed to present any evidence that the adjusted gross income of \$19,726 was in error and has failed to rebut the Department's *prima facie* case.

Because the taxpayer paid only \$139 of the \$410 tax assessment for 2000, he has now been assessed double penalties and interest for failing to pay his total tax assessment during the amnesty period. Taxpayer argued at the evidentiary hearing that the Department told him he owed \$139, and he paid that amount. "Now they come back at me, and they say, oh, you know, you owe us more money." Tr. p. 32. If the Department told the taxpayer he owed \$139, it was because he mailed in a 2000 tax return with an incorrect adjusted gross income of \$5,274. Taxpayer received an NOD dated August 1, 2003 showing a tax due of \$410. Taxpayer received an amnesty notice dated September 15, 2003, showing an "Amnesty Balance Due" of \$410. Taxpayer only paid \$139 of the \$410 due, and accordingly, has not presented reasonable cause for the abatement of the penalties. The taxpayer has been given credit for the \$139 on the EDA-24 Auditor's Report for tax year 2000.

WHEREFORE, for the reasons stated above, it is my recommendation that the NOD as amended by the EDA-24 should be finalized.

October 12, 2004

Kenneth J. Galvin
Administrative Law Judge